

sub
B1
A
cont

(b) a second facilitator substance to aid in the infusion of the first substance into at least one cell, wherein the concentrations of said first and second substances are effective to stabilize the structure and nucleic acids of said at least one cell, and further, wherein the combined concentration of said first and second substances is greater than 30% of said composition.

REMARKS

Claims 1- 17 are in the present application.

Claims 1-4, 6 and 13-17 have been rejected under 35 U.S.C. §102(b) as allegedly anticipated by Bresser et al. Claims 5 and 8-12 have been rejected under 35 U.S.C. §102(b) as allegedly anticipated by, or alternatively, under 35 U.S.C. §103(a) as allegedly rendered obvious by Bresser et al.

Applicants have amended Claim 1 in order to further clarify the subject matter of the present invention. At the end of Claim 1, Applicants have added the phrase "wherein the combined concentration of said first and second substances is greater than 30% of said composition."

The present invention describes a composition for stabilizing the structure and nucleic acids of at least one cell, said composition being comprised of:

- (a) a first substance capable of precipitating or denaturing proteins, comprising at least one alcohol or ketone; and
- (b) a second facilitator substance to aid in the infusion of the first substance into at least one cell,

wherein the concentrations of said first and second substances are effective to stabilize the structure and nucleic acids of said at least one cell, and further, wherein the combined concentrations of said first and second substances is greater than 30% of said composition.

Bresser et al. do not teach, disclose or anticipate the claimed invention. In fact, Bresser teaches away from the combined concentration of said first and second substances being greater than 30% (column 2, lines 62-64; column 3, lines 9-11; column 3, lines 27-30; column 4, lines 12-14; column 5, lines 21-23; column 5, lines 36-37; claim 1, column 17, lines 34-37; claim 30, column 19, lines 46-49; claim 53, column 21, lines 51-53; and claim 54, column 22, lines 11-13). All of the compositions in the claimed invention as amended now have a combined concentration of the first and second substances being greater than 30% of the composition.

Although the claims have been rejected as anticipated under 35 U.S.C. §102(b) on the disclosure of Bresser et al., it is axiomatic that anticipation under Section 102 requires that the prior art reference disclose every element of the claim. In re King, 801 F.2d 1324, 1326, 231 U.S.P.Q. 136, 138 (Fed. Cir. 1986). Thus there must be no differences between the subject matter of the claim and the disclosure of the prior art reference. Stated in another way, the reference must contain within its four corners adequate directions to practice the invention. The corollary of this rule is equally applicable. The absence from the reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986).

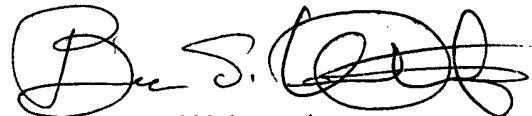
Here it is clear that Claim 1 as amended and all claims dependent thereon differ from Bresser et al. Clearly, Kloster Speedsteel shows that Bresser et al. falls far short

of the statutory standard of 35 U.S.C. 102(b). Claims 1-17 are not anticipated by Bresser et al. Withdrawal of the instant rejection under Section 102 is therefore respectfully requested.

The Examiner has alleged that Claims 5 and 8-12 are rendered obvious under 35 U.S.C. §103 by Bresser et al. Applicants note that Claims 5 and 8-12 are dependent on Claim 1 which has now been amended. Bresser et al. specifically teach away from the claimed invention as amended and thus do not teach or suggest the claimed invention as amended. Withdrawal of this rejection under Section 103 is therefore respectfully requested.

In view of the above Amendments and Remarks, Applicants believe that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce S. Weintraub", with a large, stylized flourish at the end.

Bruce S. Weintraub
Attorney/Agent for Applicant(s)
Registration No. 34,277

BECTON, DICKINSON AND COMPANY
1 Becton Drive
Franklin Lakes, NJ 07417-1880
(201) 847-7096
p4762
#33257